Alfredo Purata
NAME

J-34602
PRISON NUMBER

P.O. Box 8504
CURRENT ADDRESS OR PLACE OF CONFINEMENT

Coalinga, California 93210
CITY, STATE, ZIP CODE

FILING FEE PAID
Yes ___ No ✓
IFP MOTION FILED
Yes ___ No ✓
COPIES SENT TO
Court ✓ ProSe ___

FILED
MAY 1 4 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY ___ DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Alfredo Purata,
(FULL NAME OF PETITIONER)

PETITIONER

v.

James Yates (warden)
(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS])

RESPONDENT

and

_______________,

The Attorney General of the State of California, Additional Respondent.

Civil No. '08 CV 0869 IEG WMc
(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack: San Diego, California, Superior Court of California
2. Date of judgment of conviction: Aug. 10, 1994
3. Trial court case number of the judgment of conviction being challenged: S.C.D 103277
4. Length of sentence: 112 years 4 month

5. Sentence start date and projected release date: 09/21/94

6. Offense(s) for which you were convicted or pleaded guilty (all counts): (1) P.C. forcible rape, (2) forcible rape, (3) forcible rape, (4) forcible rape, (5) forcible oral copulation, (6) sexual penetration with a foreing object (7) sexual battery, (8) False imprisonment, Dissuading a witness, with enhancement prior.

7. What was your plea? (CHECK ONE)
   - (a) Not guilty ☒
   - (b) Guilty ☐
   - (c) Nolo contendere ☐

8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)
   - (a) Jury ☒
   - (b) Judge only ☐

9. Did you testify at the trial?
   ☒ Yes ☐ No

DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the **California Court of Appeal**?
    ☒ Yes ☐ No

11. If you appealed in the **California Court of Appeal**, answer the following:
    - (a) Result: Denied
    - (b) Date of result, case number and citation, if known: 4-25-96
    - (c) Grounds raised on direct appeal: Same as above (#6)

12. If you sought further direct review of the decision on appeal by the **California Supreme Court** (e.g., a Petition for Review), please answer the following:
    - (a) Result: Denied
    - (b) Date of result, case number and citation, if known: unknown
    - (c) Grounds raised: Insufficent of Evidence, Illegal use of Texas felony, P.C. § 667(d)(e) violates separation of powers, sentence was cruel and unusual punishment

13. If you filed a petition for certiorari in the **United States Supreme Court**, please answer the following with respect to that petition:

(a) Result: N/A

(b) Date of result, case number and citation, if known: ______

(c) Grounds raised: ______

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Superior Court**?
☐ Yes ☐ No

15. If your answer to #15 was "Yes," give the following information:

(a) **California Superior Court** Case Number: SCD 103277

(b) Nature of proceeding: Petition for writ of Habeas Corpus.

(c) Grounds raised: (1) Court illegally enhanced petitioner's sentence using out of state felony.
(2) The imposition of consecutive sentences was in error and in violation of the 8th and 14th Amendment of the U.S. Constitution.

(d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No

(e) Result: Denied

(f) Date of result: 12/14/2006

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Court of Appeal**?
☐ Yes ☐ No

17. If your answer to #17 was "Yes," give the following information:

(a) **California Court of Appeal** Case Number: D 050366

(b) Nature of proceeding: Habeas Corpus.

(c) Grounds raised: Court Illegally Enhanced Petitioner's sentence

Using out of state felony whose elements were not the same as same offense under California law for Attempted murder.

(d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No

(e) Result: Denied

(f) Date of result: Jun 14, 2007

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Supreme Court**?
☒ Yes ☐ No

19. If your answer to #19 was "Yes," give the following information:

(a) **California Supreme Court** Case Number: S155467

(b) Nature of proceeding: Habeas Corpus

(c) Grounds raised: (1) Court illegally enhanced petitioner's sentence using out of state felony. (2) The imposition of consecutive sentences was in error and in violation of the 8th and 14th Amendment of the U.S. Constitution.

(d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No

(e) Result: Denied

(f) Date of result: Jan 30 2008

20. If you did *not* file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the **California Supreme Court**, containing the grounds raised in this federal Petition, explain briefly why you did not:

N/A

COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your **first** federal petition for writ of habeas corpus challenging this conviction?

☐ Yes ☒ No (IF "YES" SKIP TO #11)

(a) If no, in what federal court was the prior action filed? ? District Court - Southern

(i) What was the prior case number? NO MEMORY OF THIS

(ii) Was the prior action (CHECK ONE):

☒ Denied on the merits?

☐ Dismissed for procedural reasons?

(iii) Date of decision: ______

(b) Were any of the issues in this current petition also raised in the prior federal petition?

☒ Yes ☐ No — However, not is same scope presented here.

(c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?

☐ Yes ☒ No

Single Issue previously raised is currently different in scope

CAUTION:

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present ***all*** other grounds to the California Supreme Court before raising them in your federal Petition.

- **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.

- **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

GROUNDS FOR RELIEF

22. **State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground.** If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE**: Trial court, in violation of the 14th Amendment (Due Process), illegally enhanced sentance by using an out of state felony to double the maximum term in violation of P.C. §667(a)(1)

Supporting FACTS (state *briefly* without citing cases or law): Petitioner was sentenced in 1994, reciving the high term of 8 years under P.C. §264. The trial judge then doubled this term to 16 years (Time 6 counts) by using an out of state felony under California's three strikes enhancement law. Based on new case law as of june, 2006, petitioner notes this enhancement doubling was illegal when applied to an out of state felony that did not include all the elements of the same serious felony under California law. Upon notice of Appeal from Sep. 27, 1994, petitioner's cousel noted judicial over-reaching, and objected to use of out of state priors as part of sentencing. The court refused this motion and allowed a Texas prior to be used (Court minutes Aug. 1, 1994). Petitioner has attempted to bring awareness to this error, but had no available legal basis until this recent case law was obtained.

Did you raise GROUND ONE in the California Supreme Court?

☒ Yes ☐ No.

(b) **GROUND TWO**: In violation of the 8th and 14th Amendment of US Court; trial judg abused her discretion in applying consecutive rather than concurrent sentences.

Supporting FACTS (state *briefly* without citing cases or law): Upon sentencing in 1994, trial judge applied multiple consecutive sentences based solely on recommendations of the District Attorney and probation officer. Petitioner notes while mitigation arguments were used at sentencing hearing, judge gave consecutive sentences in violation of [California Law] rule 4.425. (Previous rule 425). As per Rule 4.425(a)(1): Petitioner notes his court were all in the same location, on same day, in same 7-8 hr. time frame, all in same room, all against same person, with the same over all objective as per charge §264 is one over all assault. Thus this factor was not met to allow consecutive sentencing. Thus petitioner argues consecutive sentencing was abuse of discretion, violation of due process and cruel & unusual punishment. Petitioner request evidentiary hearing to resolve this illegal sentencing.

Based on recent case law, court failed to instruct jury on multiple vs. single acts (or conspiracies) thus sentencing violated petitioner's due process rights.

Did you raise GROUND TWO in the California Supreme Court?

☒ Yes ☐ No.

(c) **GROUND THREE**:

Supporting FACTS (state *briefly* without citing cases or law):

N/A

Did you raise GROUND THREE in the California Supreme Court?

☐ Yes ☐ No.

(d) **GROUND FOUR**: ______

Supporting FACTS (state *briefly* without citing cases or law): ______

N/A

Did you raise GROUND FOUR in the California Supreme Court?

☐ Yes ☐ No.

23. Do you have any petition or appeal **now pending** in any court, either state or federal, pertaining to the judgment under attack?
☐ Yes ☒ No

24. If your answer to #23 is "Yes," give the following information:
(a) Name of Court: ______
(b) Case Number: N/A
(c) Date action filed: ______
(d) Nature of proceeding: ______
(e) Grounds raised: ______
(f) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:
(a) At preliminary hearing: ______
(b) At arraignment and plea: N/A
(c) At trial: ______
(d) At sentencing: ______
(e) On appeal: ______
(f) In any post-conviction proceeding: ______
(g) On appeal from any adverse ruling in a post-conviction proceeding: ______

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
☒ Yes ☐ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
☐ Yes ☒ No

(a) If so, give name and location of court that imposed sentence to be served in the future:

(b) Give date and length of the future sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
☐ Yes ☐ No

28. Date you are mailing (or handing to a correctional officer) this Petition to this court:
X 5/9/08

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

X 5/9/08 X Alfredo Purata

(DATE) SIGNATURE OF PETITIONER

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

2254 ✓ 1983

FILING FEE PAID Yes ___ No ✓

IFP MOTION FILED Yes ___ No ___

COPIES SENT TO Court ✓ ProSe

FILED MAY 14 2008 CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA BY KW DEPUTY

I (a) PLAINTIFFS	DEFENDANTS
Alfredo Purata	James Yates
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Fresno (EXCEPT IN U.S. PLAINTIFF CASES)	COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)	ATTORNEYS (IF KNOWN)
Alfredo Purata **PO Box 8504** **Coalinga, CA 93210** **J-34602**	'08 CV 0869 IEG WMc

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX (For Diversity Cases Only) FOR PLAINTIFF AND ONE BOX FOR DEFENDANT

	PT	DEF		PT	DEF
Citizen of This State	☐1	☐1	Incorporated or Principal Place of Business in This State	☐4	☐4
Citizen of Another State	☐2	☐2	Incorporated and Principal Place of Business in Another State	☐5	☐5
Citizen or Subject of a Foreign Country	☐3	☐3	Foreign Nation	☐6	☐6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
	PERSONAL INJURY	PERSONAL INJURY			
☐ 110 Insurance	☐ 310 Airplane	☐ 362 Personal Injury-Medical Malpractice	☐ 610 Agriculture	☐ 422 Appeal 28 USC 158	☐ 400 State Reappointment
☐ Marine	☐ 315 Airplane Product Liability	☐ 365 Personal Injury - Product Liability	☐ 620 Other Food & Drug	☐ 423 Withdrawal 28 USC 157	☐ 410 Antitrust
☐ Miller Act	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability	☐ 625 Drug Related Seizure of Property 21 USC881	**PROPERTY RIGHTS**	☐ 430 Banks and Banking
☐ Negotiable Instrument	☐ 330 Federal Employers' Liability	**PERSONAL PROPERTY**	☐ 630 Liquor Laws	☐ 820 Copyrights	☐ 450 Commerce/ICC Rates/etc.
☐ 150 Recovery of Overpayment &Enforcement of Judgment	☐ 340 Marine	☐ 370 Other Fraud	☐ 640 RR & Truck	☐ 830 Patent	☐ 460 Deportation
☐ 151 Medicare Act	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 650 Airline Regs	☐ 840 Trademark	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 660 Occupational Safety/Health	**SOCIAL SECURITY**	☐ 810 Selective Service
☐ 153Recovery of Overpayment of Veterans Benefits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	☐ 690 Other	☐ 861 HIA (13958)	☐ 850 Securities/Commodities Exchange
☐ 160 Stockholders Suits	☐ 360 Other Personal Injury		**LABOR**	☐ 862 Black Lung (923)	☐ 875 Customer Challenge 12 USC
☐ Other Contract			☐ 710Fair Labor Standards Act	☐ 863 DIWC/DIWW (405(g))	☐ 891 Agricultural Acts
☐ 195 Contract Product Liability			720 Labor/Mgmt. Relations	☐ 864 SSID Title XVI	☐ 892 Economic Stabilization Act
			☐ 730 Labor/Mgmt. Reporting & Disclosure Act	☐ 865 RSI (405(g))	☐ 893 Environmental Matters
			☐ 740 Railway Labor Act	**FEDERAL TAX SUITS**	☐ 894 Energy Allocation Act
			☐ 790 Other Labor Litigation	☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 895 Freedom of Information Act
			☐ 791 Empl. Ret. Inc. Security Act	☐ 871 IRS - Third Party 26 USC 7609	☐ 900 Appeal of Fee Determination Under Equal Access to Justice
					☐ 950 Constitutionality of State
					☐ 890 Other Statutory Actions

REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS
☐ 210 Land Condemnation	☐ 441 Voting	☐ 510 Motions to Vacate Sentence Habeas Corpus
☐ 220 Foreclosure	☐ 442 Employment	☒ 530 General
☐ 230 Rent Lease & Eiectmant	☐ 443 Housing/Accommodations	☐ 535 Death Penalty
☐ 240 Tort to Land	☐ 444 Welfare	☐ 540 Mandamus & Other
☐ 245 Tort Product Liability	☐ 440 Other Civil Rights	☐ 550 Civil Rights
☐ 290 All Other Real Property		

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appelate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 **DEMAND $** Check YES only if demanded in complaint: **JURY DEMAND:** ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Docket Number

DATE 5/14/2008 ~~SIGNATURE OF ATTORNEY OF RECORD~~

R.Mclley

CR